

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

STAR MARIANAS AIR, INC.,

Complainant,

v.

COMMONWEALTH PORTS AUTHORITY,

Respondent.

Docket DOT-OST-2021-0138

**RESPONDENT'S MOTION PURSUANT TO 14 C.F.R. § 302.6(c)  
FOR LEAVE TO FILE AN UNAUTHORIZED MOTION**

Please serve:

Scott P. Lewis  
Timothy J. Roskelley  
Mina S. Makarious  
Paul M. Kominers  
Ezra Dunkle-Polier  
ANDERSON & KREIGER LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, Massachusetts 02109  
T: 617.621.6500  
F: 617.621.6639  
slewis@andersonkreiger.com  
troskelley@andersonkreiger.com  
mmakarious@andersonkreiger.com  
pkominers@andersonkreiger.com  
edunkle-  
polier@andersonkreiger.com

*Counsel for Commonwealth Ports  
Authority*

The Robert T. Torres  
TORRES LAW GROUP  
Plata Drive  
Whispering Palms (Chalan Kiya)  
P.O. Box 50375 CK  
Saipan, MP 96950  
T: 670.234.7859  
F: 670.234.5749  
robert.torres@rttlawgroup.com

November 5, 2021

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

STAR MARIANAS AIR, INC.,

Complainant,

v.

COMMONWEALTH PORTS AUTHORITY,

Respondent.

Docket DOT-OST-2021-0138

**RESPONDENT'S MOTION PURSUANT TO 14 C.F.R. § 302.6(c)  
FOR LEAVE TO FILE AN UNAUTHORIZED MOTION**

The Respondent, the Commonwealth Ports Authority (“CPA”), moves for leave to file the accompanying Exhibit A, “Respondent’s Motion for Relief from Deadline to Post a Letter of Credit.” As grounds for this motion, CPA states that the accompanying motion is important to allow CPA to avoid the unwarranted cost and inconvenience of prematurely posting a letter of credit, and that allowance of CPA’s motion will not prejudice the Complainant.

November 5, 2021

By its attorneys,

ANDERSON & KREIGER LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, Massachusetts 02109  
T: 617.621.6500  
F: 617.621.6639  
E: slewis@andersonkreiger.com  
troskelley@andersonkreiger.com  
mmakarious@andersonkreiger.com  
pkominers@andersonkreiger.com  
edunkle-polier@andersonkreiger.com

By: /s/ Ezra Dunkle-Polier  
Ezra Dunkle-Polier

The Robert T. Torres  
TORRES LAW GROUP  
Plata Drive  
Whispering Palms (Chalan Kiya)  
P.O. Box 50375 CK  
Saipan, MP 96950  
T: 670.234.7859  
F: 670.234.5749  
E: robert.torres@rttlawgroup.com

*Counsel for Commonwealth Ports Authority*

### **CERTIFICATE OF SERVICE**

In accordance with the requirements of 14 C.F.R. § 302.7(e)(2), I hereby certify that on November 5, 2021, a true and correct copy of this Motion was served by email on complainant's counsel of record, and no indication was received that transmission had failed:

**Star Marianas Air, Inc.**

Richard L. Richards

Alejandra Muñoz Marcial

[r-richards@richpa.net](mailto:r-richards@richpa.net)

[amuniz@richpa.net](mailto:amuniz@richpa.net)

[service@richpa.net](mailto:service@richpa.net)

Richards Legal Group

55 Miracle Mile, Suite 310

Coral Gables, Fla. 33134

By: /s/ Ezra Dunkle-Polier

EZRA DUNKLE-POLIER

# Exhibit A

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

STAR MARIANAS AIR, INC.,

Complainant,

v.

COMMONWEALTH PORTS AUTHORITY,

Respondent.

Docket DOT-OST-2021-0138

**RESPONDENT'S MOTION FOR RELIEF FROM  
DEADLINE TO POST A LETTER OF CREDIT**

Please serve:

Scott P. Lewis  
Timothy J. Roskelley  
Mina S. Makarious  
Paul M. Kominers  
Ezra Dunkle-Polier  
ANDERSON & KREIGER LLP  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, Massachusetts 02109  
T: 617.621.6500  
F: 617.621.6639  
slewis@andersonkreiger.com  
troskelley@andersonkreiger.com  
mmakarious@andersonkreiger.com  
pkominers@andersonkreiger.com  
edunkle-polier@andersonkreiger.com

The Robert T. Torres  
TORRES LAW GROUP  
Plata Drive  
Whispering Palms (Chalan Kiya)  
P.O. Box 50375 CK  
Saipan, MP 96950  
T: 670.234.7859  
F: 670.234.5749  
robert.torres@rttlawgroup.com

*Counsel for Commonwealth Ports Authority*

November 5, 2021

UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

STAR MARIANAS AIR, INC.,

Complainant,

v.

COMMONWEALTH PORTS AUTHORITY,

Respondent.

Docket DOT-OST-2021-0138

**RESPONDENT’S MOTION FOR RELIEF FROM  
DEADLINE TO POST A LETTER OF CREDIT**

The Respondent, the Commonwealth Ports Authority (“CPA”), moves to postpone the deadline for obtaining “a letter of credit, or surety bond, or other suitable credit facility, equal to the amount in dispute” (“LOC”), 49 U.S.C. § 47129(d)(1)(C), from November 11, 2021 to December 31, 2021 for the following reasons:

1. The self-evident purpose of the payment-under-protest scheme of 49 U.S.C. § 47129(d) is to ensure that the airport continues to receive necessary operating revenue, while “assur[ing] the timely repayment, with interest, of amounts in dispute determined not to be reasonable by the Secretary.”

2. As the Department noted in its October 26, 2021 Scheduling Order imposing the November 11 deadline, payments of the disputed rates and charges will not begin to come due until January 1, 2021, but the Department expects to issue its “significant dispute” determination by November 22, 2021. Accordingly, this is the rare case under § 47129 where the Department

will determine whether a significant dispute exists before the complaining airline – in this case, Star Marianas Air, Inc. (“SMA”) – will be under any obligation to pay the contested fees.

3. SMA has not alleged that it will pay the contested fees (under protest or otherwise) when they begin to come due on and after January 1, 2022, and there is no reason to expect them to do so. Even though it was operating under an agreed-upon Airline Use Agreement through September 30, 2021, SMA has not paid any landing fees or terminal rentals to CPA for more than *six years*. *See* Hofschneider Decl. ¶ 24.\* SMA currently owes CPA \$2,606,428. *Id.*

4. Even if SMA were to pay all the contested fees under protest for the time between January 1, 2022 and the end of the 120-period for which an LOC would be required, its total payments would come to only **\$23,250** – or less than 1% of its outstanding debt to the CPA. *See* Ossege Decl. ¶ 12. CPA can always repay SMA by forgiving some of SMA’s outstanding debt.

5. Under these unprecedented circumstances, there is no good reason to require CPA to expend time and money to obtain an LOC before the Department rules on the “significant dispute” question and nearly two months before SMA’s obligation to pay begins.

For all of these reasons, the Department should grant this motion and relieve CPA of any obligation to post an LOC before fees will first be due under the contested rate methodology.

---

\* In support of its Answer, CPA has submitted an Appendix of Evidence containing the Declaration of Skye Hofschneider (“Hofschneider Decl.”) and the Declaration of Bonnie Ossege (“Ossege Decl.”).



November 5, 2021

By its attorneys,

ANDERSON & KREIGER LLP  
*Counsel for Commonwealth Ports Authority*  
50 Milk Street, 21<sup>st</sup> Floor  
Boston, Massachusetts 02109  
T: 617.621.6500  
F: 617.621.6639  
E: slewis@andersonkreiger.com  
troskelley@andersonkreiger.com  
mmakarious@andersonkreiger.com  
pkominers@andersonkreiger.com  
edunkle-polier@andersonkreiger.com

By: /s/ Ezra Dunkle-Polier  
Ezra Dunkle-Polier

The Robert T. Torres  
TORRES LAW GROUP  
Plata Drive  
Whispering Palms (Chalan Kiya)  
P.O. Box 50375 CK  
Saipan, MP 96950  
T: 670.234.7859  
F: 670.234.5749  
E: robert.torres@rttlawgroup.com